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In re Application of

KYONO

Application No.: 10/520,607

PCT No.: PCT/JP04/00089

Int. Filing Date: 09 January 2004

Priority Date: 28 January 2003

Atty Docket No.: 44471/309937

For: POWER SUPPLY DEVICE

DECISION ON PETITION

UNDER 37 CFR 1.10(d)

This decision is in response to applicant's "Renewed Petition Under 37 CFR 1.10(d)" filed 23 October 2007 in the United States Patent and Trademark Office (USPTO).

**BACKGROUND**

On 28 August 2007, applicant was mailed a decision dismissing applicant's petition under 37 CFR 1.10(d) to accord a 35 U.S.C. 371 date of 07 January 2005. Applicant was afforded two months to file any request for reconsideration.

On 23 October 2007, applicant filed the present renewed petition under 37 CFR 1.10 (d).

**DISCUSSION**

As detailed in the decision mailed 28 August 2007, in order to be granted, a petition under 37 CFR 1.10(d) must be:

- 1) Filed promptly after the person becomes aware that the Office has accorded or will accord, a filing date based upon an incorrect entry by the USPS;
- 2) The number of the "Express Mail" mailing label was placed on the filed papers; and
- 3) The petition includes a showing to the satisfaction of the Director that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day.

Applicant previously satisfied items 1 and 2.

Regarding item 3, as previously explained, while the Express Mail mailing label is stamped with a USPS barrel stamp with a date of 07 January 2005, the same label has a "date-in" date of

"1-6-05" the date accorded by the USPTO. As this information was in conflict and the label was the only evidence supplied which came from the USPS, the initial petition under 37 CFR 1.10(d) was dismissed. (Applicant also included a copy of the postcard submitted with the filing; however this item was prepared prior to the mailing of the subject Express Mail mailing). Applicant has presently provided a declaration of Mr. Alex Carter and a letter from counsel dated 07 January 2005.

Regarding the declaration of Mr. Carter, it does not appear that Mr. Carter has any firsthand knowledge of the depositing of the subject Express Mail mailing as he did not begin his present position until June, 2005 while the papers in question were mailed in January, 2005. In addition, Mr. Carter states that the firm mail log for January, 2005 could not be located.

As to the letter of counsel dated 07 January 2005; while this letter does constitute a business record, it does not contain the necessary information that one would find in a mail log. The Manual of Patent Examining Procedure (MPEP) section 513 states:

Evidence that came into being within one day after the deposit of the correspondence as "Express Mail" may be in the form of a log book which contains information such as the "Express Mail" number; the application number, attorney docket number or other such file identification number; the place, date and time of deposit; the time of the last scheduled pick-up for that date and place of deposit; the depositor's initials or signature; and the date and time of entry in the log.

While an actual mail log entry is not required, supporting evidence which came into being within one day after deposit should contain the information listed above. The enclosed letter does not. As such, it is not possible to grant applicant's renewed petition.

### **CONCLUSION**

For the reasons stated above, applicant's renewed petition under 37 CFR 1.10(d) is **DISMISSED**.

Any reconsideration on the merits of this petition must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.10(d)." No additional petition fee is required.

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Any further correspondence with respect to this matter should be directed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration

A handwritten signature in black ink, appearing to read 'Derek A. Putonen'.

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